

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**A Handy Co LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:42 I/II employer/employee relationship

**Employer:** A Handy Co. LLC, 13 Gaston Rd., Pelham, NH 03076

**Date of Hearing:** May 11, 2015

**Case No.:** 50015

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts she is owed \$450.00 in unpaid wages. She claims she worked thirteen hours between February 1 and 2, 2015 and seventeen hours between February 8 and 9, 2015. She plowed snow for A Handy Co LLC.

She argues that at no time did she represent herself as an independent contractor. She further asserts that she did not sign a contract with A Handy Co LLC. She alleges that someone forged both her signature and initials on the contract presented by A Handy Co LLC.

A Handy Co LLC denies the claimant was an employee. They presented a contract signed by both parties outlining an independent contractor relationship. Further, the claimant did earn the wages, but damaged a vehicle. They did not pay the \$450.00 to offset the cost of repair to the vehicle.

Further, they argue that this is a civil matter and that the New Hampshire Department of Labor is not the proper forum.

**FINDINGS OF FACT**

This Department must first to determine whether the claimant was an employee or an independent contractor. RSA 275:42 II defines "employee" as, "means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VI(b)(2), (3), or (4), or RSA 281-A:2, VII(b), or a person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, or any person who meets all of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations.

(f) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(g) The person is not required to work exclusively for the employer.

The claimant argued she did not sign the contract offered as evidence by A Handy Co LLC.

A Handy Co LLC argued contract proved the claimant was an independent contractor. Their argument that the claimant would not receive additional work if she did not satisfactorily complete work is not indicative that she was responsible for the satisfactory completion of work, and she could not be held contractually responsible for failure to complete the work, as required by subpart (f). The contract did not specifically address this issue.

The Hearing Officer finds that the claimant was an employee of an employer, not an independent contractor, because the claimant does not meet the criteria in (e) or (f). The claimant testified credibly that she did not hold herself out to be in business for herself and did not have any recurring business liabilities or obligations. The claimant was not responsible for the satisfactory completion of work, and she could not be held contractually responsible for failure to complete the work.

A Handy Co LLC (hereafter "the employer") did not disagree that the claimant had earned the wages, only that she had damaged a vehicle.

The claimant provided credible testimony that she worked thirteen hours between February 1 and 2, 2015 and seventeen hours between February 8 and 9, 2015, plowing snow for the employer.

The employer did not offer any testimony or evidence to refute the claimant's assertion that she had worked these hours.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence that she is due the claimed wages in the amount of \$450.00

## **DISCUSSION**

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that her assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant met her burden in this claim.

The issue of the whether it is the claimant's signature on the contract or other documentation is not at issue for this hearing as the contract did not address the criteria under RSA 275:42 II (e) and (f).

## **DECISION AND ORDER**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed wages, it is hereby ruled that the Wage Claim is valid in the amount of \$450.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$450.00, less any applicable taxes, within 20 days of the date of this Order.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: May 19, 2015

MJD/kdc